

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Auction of Advanced Wireless Services)	AU Docket No. 06-30
Scheduled for June 29, 2006)	

To: The Wireless Telecommunications Bureau

COMMENTS OF CINGULAR WIRELESS LLC

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SUMMARY

Having conducted scores of spectrum auctions over the past 12 years, the Commission is preparing for the most important nationwide auction of terrestrial wireless spectrum since the initial broadband PCS auctions in the mid-1990s. Auction 66 offers the promise of assigning licenses over which new and innovative wireless services can be brought to the public. The stakes in Auction 66 are high, and the Commission would be unwise to significantly alter for this auction basic auction procedures with which bidders have become comfortable over the auction program's history.

Cingular Wireless LLC ("Cingular") supports the Bureau's proposal in the *Public Notice* to employ the traditional simultaneous multiple-round (SMR) auction design that the Commission has used in almost all of its previous auctions. The Bureau should not use the package bidding (PB) auction design for the first time in Auction 66.

Cingular also urges the Bureau not to alter its traditional policies regarding the release of information regarding bidding and bidder identities. The *Public Notice* proposes that most such information be withheld from bidders both before and during Auction 66. But the *Public Notice* does not identify a problem with the prior practice of disseminating information equally to all bidders before and during auctions. Instead, the Commission appears to be willing to use Auction 66 as a test bed to examine competing economic theories. The proposed about-face in the Commission's information disclosure policy will increase bidder uncertainty and place at risk some of the fundamental goals which the spectrum auction program is designed to achieve. Cingular respectfully urges the Commission not to use Auction 66 as a vehicle to conduct this experiment.

Cingular also suggests that the Commission make an announcement once the total of the net provisionally winning bids in Auction 66 exceeds the reserve price set by the Commission pursuant to the Commercial Spectrum Enhancement Act of 2004, and that it allow for an alternative stopping rule to take effect if the auction would otherwise end before the reserve price has been met.

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Cingular Wireless LLC (“Cingular”) hereby submits comments in the above-referenced proceeding in response to the Wireless Telecommunications Bureau’s (“Bureau’s”) January 31, 2006 Public Notice.¹ As discussed in detail below, Cingular supports the Bureau’s proposal to conduct a single Simultaneous Multiple-Round (SMR) Auction for all Advanced Wireless Services (“AWS”) licenses in Auction 66, and urges the Bureau to refrain from conducting a Package Bidding auction for the same or any subset of the same licenses. Cingular also urges the Bureau not to adopt its proposal to withhold significant elements of bidder information prior to and during the auction, as the release of such information is critical to conducting an efficient and fair auction. Finally, Cingular suggests that the Commission announce when the reserve price for Auction 66 has been met, and offers an alternative stopping rule in the event that Auction 66 appears headed for a closing before meeting the reserve price.

¹ *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006*, Public Notice, DA-06-238 (released January 31, 2006) (“Public Notice”).

I. The FCC Should Conduct a Single Simultaneous Multiple-Round (SMR) Auction for All Licenses in Auction 66.

In the Public Notice, the Bureau proposes to auction all of the AWS licenses in the 1710-1755 and 2110-2155 MHz (“AWS-1”) bands in a single auction using the Commission’s standard SMR auction format. However, the Bureau also seeks comment on the feasibility and desirability of simultaneously conducting a second auction using the package bidding (“SMR-PB”) format. The Bureau suggests that such an approach “could allow bidders to better express the value of any synergies . . . that may exist among licenses, and avoid the risk of winning only part of a desired aggregation.”²

Cingular strongly supports the use of only the SMR auction design for Auction 66. The SMR design has been used successfully for more than ten years for auctions involving PCS, LMDS, paging and many other radio services. It has become familiar to the entire wireless telecommunications industry, which has made substantial investment in software and facilities, and has developed significant expertise in auction strategies based on this model. The SMR design, which was once a daunting approach to the licensing of airwaves, is now familiar to large and small bidders alike. Given the large number of licenses and numerous different geographic license sizes covered in Auction 66, the Commission should again employ the SMR design to assure that Auction 66 results in a competitive, efficient and fair allocation of licenses.

Cingular opposes use of a package, or so-called “combinatorial,” bidding design for Auction 66. Unlike the SMR model, the SMR-PB model is an untried approach which is certain to require applicants to develop different strategies, valuations and

² *Public Notice* at p. 5.

bidding decisions than have been used by applicants operating under the SMR design. In order to conduct informed round-by-round analysis in the SMR-PB format, bidders will necessarily be required to invest in new bidding programs and infrastructure, neither of which can be developed until the Bureau makes a final decision on whether to employ package bidding and, if it decides to use the SMR-PB design, how it would be implemented. Given the very short lead time that the Commission has allowed before the AWS auction is scheduled to begin, there is simply not enough time for bidders to analyze this bidding mechanism, create the necessary infrastructure, and then develop the appropriate strategies required to evaluate and win particular packages of licenses under such an approach. Even if the Bureau were to announce today that it will include a package bidding component in Auction 66, there is not enough time for all prospective bidders to prepare for such an auction.

In addition, concurrently conducting an SMR auction with an SMR-PB auction, as the Bureau is considering for Auction 66, would make it even more difficult for bidders to participate meaningfully in the auction. Such an approach would exponentially complicate the auction process and make Auction 66 more difficult for bidders than any previous auction the Commission has conducted. In order to have their best chance at winning the licenses they want and minimizing the risk of being stuck with unwanted licenses, bidders will have to participate in both auctions, maintain their eligibility in each auction independently, track two sets of auction results from each

auction round, and analyze these results to form a strategy for the next round.³ This burden is likely to fall hardest on smaller bidders with fewer resources.

Furthermore, the tracking and analysis that bidders will have to undertake in an auction employing both SMR and PB designs will clearly require substantially more complex bidding tools than ever before. These tools simply do not exist today, and it would likely require months of development and testing before bidders in a high-stakes auction like Auction 66 would feel comfortable using them.

While the Bureau suggests that the SMR-PB option allows bidders to better express the value of synergies among various license groups, the record of bidding in the numerous SMR auctions that have been held for PCS licenses suggests that bidders have generally achieved such synergies through the SMR process. Auctions to date have resulted in significant regionalization and even nationalization of the CMRS industry. While there may be instances where bidders have failed to fill out their entire footprint through the auction process, the vigorous secondary market for spectrum that the FCC has encouraged has adequately resolved those problems. The Bureau recognizes that the benefits of such synergies for larger bidders may well be offset by the burdens imposed on bidders who do not need or wish to aggregate licenses or those who would be happy with any or all of a group.

Moreover, the notion of conducting two auctions – one using SMR and the other using SMR-PB – simultaneously for essentially fungible licenses is inconsistent with the theoretical underpinnings of each. Package bidding is intended to enable bidders to incur

³ Even a bidder that chooses to submit an upfront payment for only one of the two concurrent auctions would need to monitor the bidding in both auctions to confirm that its bids are made with the benefit of as much information as possible.

the expense of acquiring auctioned properties only if they are assured of acquiring the critical mass of such properties that they seek, but this goal cannot be realized if bidders have to preserve their ability to participate in both an SMR and an SMR-PB auction at the same time managing their eligibility and exposure in each. SMR bidding is intended to enable bidders to offer their best price for each individual property that is offered, but that also cannot be done when a bidder is faced with the risk of emerging as the successful, if unintended, winner in each auction. While Cingular supports the concept of package bidding, we respectfully submit that it should be reserved for an auction that is conducted in its entirety in that manner.

The Commission has been considering the use of package bidding for some time, but it has not yet been employed in a real, live auction. The complexities of package bidding are real and its workability is untested, while the SMR process has been used successfully in scores of auctions. Cingular respectfully suggests that, with more than a thousand licenses up for bid in the most important nationwide auction of commercial wireless spectrum in ten years, and with the relatively short timeline before Auction 66's scheduled start, now is not the time to try package bidding for the first time.⁴

II. The FCC Should Not Alter Its Longstanding Policy Favoring the Release of Bidder Information Before and During the Auction.

For the first time in a major auction, the Bureau is proposing to change its prior policy of making bidders' license selections public at the conclusion of the application process and to release the identities of all bidders and their bid amounts at the conclusion

⁴ In the event that the Bureau nevertheless decides to engage in an SMR-PB format for some group of AWS-1 licenses, Cingular believes that such an auction must proceed before the SMR auction is commenced. Such a sequential auction would avoid some (but hardly all) of the complexities discussed above. It would also provide bidders in the SMR auction with a fair understanding of the values placed on licenses in the packages as they were provisionally won, thereby making the SMR auction more competitive with the SMR-PB auction.

of each round. Instead, the Bureau has proposed to release only (a) the identity of bidders but not their license selections at the end of the application process, and (b) the gross amount of any provisionally winning bids, but not the identity of that bidder or bidding information about any other bids during the auction. Because the existing policy has served the public interest and because there is little if any evidence that a change in policy is needed, Cingular strongly urges the Bureau to reconsider this proposal and instead provide the same level of information about bidders and their bids prior to and throughout Auction 66 that it has in virtually every other auction to date.

In 1994, after the first-ever FCC auctions, the Commission carefully weighed the costs and benefits of revealing and withholding bidder information before and during an auction, and concluded that the balance fell on the side of disclosure.⁵ In the ensuing decade, numerous spectrum auctions have taken place, and in each one, complete information as to each bidder's license selections and every bid placed has been made available equally to all bidders. With this information disclosure policy, the Commission has assigned thousands of spectrum licenses to bidders who value them most highly.

One of the bedrock principles of the FCC's spectrum auction program is that "parties that value [licenses] most highly . . . are most likely to deploy new technologies and services rapidly, promote the development of competition for the provision of those and other services (including, but not limited to cellular, SMR, paging, and other wireless services), and thus foster economic growth."⁶ The traditional information disclosure

⁵ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, *Second Memorandum Opinion and Order*, 9 FCC Rcd 7245 (1994), at paras. 37-42.

⁶ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348 (1994), at para. 70.

policy has served the public interest in advancing these goals. It would be simply unwise to make a 180° policy shift on one of the most basic elements of the auction process.

The *Public Notice* cites several theoretical studies that suggest that the economic efficiency of an SMR auction can be enhanced by withholding information from the bidders,⁷ but it does not cite as justification for the proposed policy change any specific evidence that the disclosure of bidder information caused actual collusive behavior by bidders in past auctions. Instead, the *Public Notice* suggests merely that “economists have observed, as a potential drawback to disclosing information, that bidders could use the information revealed over the multiple rounds to signal each other and . . . in some cases, to retaliate against competing bidders.”⁸ Cingular would suggest that, whatever “potential” harm exists to the public interest from such behavior is far outweighed by the benefits of an open and transparent bidding process – benefits that have been clearly demonstrated over more than a decade.

To the extent that outright collusive behavior is of concern, the proposed policy shift of bidder information may be of little use. What the Commission recognized in 1994 is still true today:

[C]oncealing bidders’ identities may not be critical to preventing collusion during an auction; existing antitrust laws and the FCC’s collusion rules should be adequate to prevent collusive conduct. In any event, under an anonymous bidding scenario, if bidders want to collude they can simply disclose their bidder identification numbers to one another before the auction.⁹

⁷ *Public Notice* at p. 6, notes 22 and 26.

⁸ *Id.* at p. 6.

⁹ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, *Second Memorandum Opinion and Order*, 9 FCC Rcd 7245 (1994), at para. 41.

In the absence of any demonstrated need to change the information disclosure policy, the Bureau's proposal is a solution in search of a problem. The Bureau attempts to distinguish Auction 66 from past successful auctions in which bidder information was available by suggesting that "the potential for such anti-competitive bidding behavior is greater when an auction offers multiple, substitutable blocks of licenses for sale and when the number of bidders is expected to be relatively low compared to the number of licenses offered." But those circumstances have existed in numerous previous auctions, resulting in gross bids in the tens of billions of dollars, without any evidence that the availability of substantial bidder information resulted in anti-competitive or collusive behavior. Nor is there any reason to believe that the number of qualified bidders in this auction will be relatively smaller in relation to the number of licenses available than was the case in previous auctions. In fact, as the most significant nationwide offering of terrestrial wireless spectrum since the initial PCS auctions, Auction 66 may well draw more bidders than in any of the recent PCS auctions. The Bureau's proposal would mark a significant change in the way FCC auctions are conducted; such a change should not be instituted on the basis of mere speculation of a problem.

Cingular also disagrees with the Bureau's suggestion, in rejecting the notion that bidders in Auction 66 will have more confidence in their bids if they know against whom they are bidding, that "the evolving market for wireless services and a record of spectrum license sales gives bidders far more information about how they should value spectrum licenses than bidders in early spectrum auctions had." Auction 66 will open up an entirely new band for an entirely new generation of services that go well beyond current CMRS applications. In addition, the Commission can reasonably anticipate that new

entrants to the wireless arena may participate in this auction in order to enhance their existing non-wireless communications offerings. There may well be as much or more uncertainty surrounding market valuations for the Auction 66 licenses as in any auction to date, so there is simply no basis for assuming that history will provide information that could serve as a substitute for the typical bidding information.

In an auction environment with high stakes but little transparency, withholding bidder information will no doubt increase uncertainty for bidders, thereby increasing perceived risk and reducing the desire to bid aggressively. Rather than enhancing the competitiveness of the auction for the benefit of the United States Treasury and increasing certainty that licenses will be assigned in the manner most likely to benefit consumers (*i.e.*, by getting service to the public quickly), withholding bidder information may lead to reduced revenues from the auction and encourage speculation by bidders whose plans may or may not include the fast deployment of new services.

Ironically, while suggesting that the withholding of information will provide more protection from collusive behavior, the Bureau has failed to identify how parties without such information will be able to comply with the very strict anti-collusion rules that govern all auctions. The primary basis used by bidders to determining with whom they and their principals may talk is review of bidder information (including identified principals and non-controlling interest holders) and license selections submitted in each applicant's short-form application. Denying access to such information will significantly complicate the analysis, and has the potential for freezing commercial activity across broad industry lines between and among applicants, as applicants and their principals are

forced to avoid contact with any entities who *might* be participating in the auction.¹⁰ As it has routinely done in the past, the Commission should make short-form applications available for public review.

Finally, the *Public Notice* proposes that bidder information would be withheld in an SMR auction, but if a parallel SMR-PB auction is conducted, the traditional information disclosure policy would apply. All participants in both auctions, however, will have an equal interest in and need to follow and analyze the conduct of both auctions in order to understand the implications for their own bidding. If complete information is disclosed in the SMR-PB auction, those participating in that auction would enjoy the advantage of having greater information about the total mix of information than will those who participate only in the SMR auction. Cingular believes that such disparate treatment would lead to unfairness in the auction.

III. The FCC Should Announce When the Reserve Price Has Been Met and Allow For an Alternative Stopping Rule.

As required by the Commercial Spectrum Enhancement Act of 2004 (“CSEA”), the Bureau has established a total “net” reserve price for Auction 66. If the FCC chooses to withhold significant information about bidders and bids during the auction, then it should make an announcement when the reserve price has been met. If the Bureau accepts Cingular’s recommendation to release the types of information about bidders and

¹⁰ At note 30 of the *Public Notice*, the Bureau states that “bidders will be made aware of other bidders with whom they will not be permitted to discuss bidding strategies” for purposes of the anti-collusion rule. No specifics of how bidders will be made aware are yet provided. As the Bureau is aware, however, the anti-collusion rule applies broadly to many principals and entities of applicants, directly and indirectly, and the penalties for breaching the rule are severe, so a lack of information about bidders from which other applicants can make their own determinations seems highly problematic.

bids that it has in the past, then no such announcement would be needed because it would be easy to determine if a bid is subject to a bidding credit.

With a reserve price required by statute, Cingular also recommends a small, but significant, change in the stopping rule for Auction 66. In past auctions, the stopping rule has called for the auction to end when there was a round in which no new bids were made on any licenses in the auction. The Bureau proposes to adopt this rule for Auction 66 as well. However, it is possible in Auction 66 that such a circumstance could occur *before* the reserve requirement has been met. If the stopping rule would result in the auction being closed, then the entire auction would be invalid, and the Commission would have to start again.

Cingular suggests that cancellation of the auction can be avoided with a small modification to the stopping rule. Under this modified rule, the Commission would simply announce that a round with no new bids has occurred and that the reserve requirement has not been satisfied, but that the auction will remain open for at least one more round. This will allow eligible bidders to increase their bids so the reserve can be met. If additional bids are received, the auction can continue until there are no bids on any license *and* the reserve requirement is satisfied. If no further bids are received at that point (or subsequently if the reserve price still has not been met) then the Commission can close the auction and, if necessary, cancel it for failure to satisfy the statutory requirements.

IV. Conclusion.

In Auction 66, the Commission has a rare opportunity to open up a large swath of newly-allocated terrestrial wireless spectrum that can be used to provide important new and innovative services to the American public. With bidders poised to offer billions of dollars for these new licenses, the Commission would be wise to utilize procedures in this auction which have been proven to work and in which bidders have confidence. Cingular urges the Commission (1) not to pursue the idea of incorporating a novel package bidding component into this auction, and (2) to reveal to all bidders the same level of information it has in past successful CMRS auctions. The Commission should not risk marring this record by deviating from the tried and true auction procedures that it has developed over the auction program's history.

Respectfully submitted,

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